

file



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Whether Land Located in the
Town of Alvin, Forest County and Owned Either
by Sierra Development and Funding Company,
Inc. d/b/a Sierra Hardwoods or by Dr. Frederick
M. Saigh, III (singly or with Kelly Hawke) Shall
Continue as Forest Cropland

Case No. IH-99-02

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Department of Natural Resources on its own motion investigated and requested a hearing to determine whether 109.10 acres located in Forest County should continue as Forest Cropland under sec. 77.02, Wis. Stats. Pursuant to due notice a hearing was held on March 31, 1999, in Crandon, Wisconsin, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Natural Resources, by

Attorney Edwina Kavanaugh
P. O. Box 7921
Madison, WI 53707-7921

Dr. Frederick M. Saigh, III and Kelly Hawke
P. O. Box 529
Iron River, MI 49935

No Appearance

FINDINGS OF FACT

1. Effective January 1, 1974, the Department of Natural Resources (Department) entered a 109.10 acre parcel owned by Owens-Illinois, Inc., with the legal description of the SWSW ¼ and Government Lots 2 and 3 in Section 10, Township 41 North, Range 13 East, Town of Alvin, Forest County as Forest Cropland. This property was subsequently sold to a

Michael J. Hageny and the Department issued a notice of transfer of ownership pursuant to sec. 77.10(1)(b), Stats.

2. On February 24, 1987, Department Forester John W. Huppert approved a management schedule requiring both a selective harvest and a regeneration harvest in 1991. The management plan provided for an "all age management system" of tree cutting. This system requires the removal of diseased, low value, and cull trees first. This system allows healthy hardwoods to thrive and increases the value of the wood lot.

3. This property was sold again and upon receiving a transfer of ownership signed in July, 1991, by Michael and Shirley Hageny as grantors and Kelly Hawke as secretary for grantee Sierra Development and Funding Company, Inc., the Department issued a notice of transfer dated August 5, 1991. An investigation by the Department could find no record of the existence of a corporation named Sierra Development and Funding, Inc. The Department determined that the property was owned by Dr. Frederick M. Saigh, III, and possibly Kelly Hawke, his spouse.

4. On February 28, 1992, the Department approved a cutting notice submitted pursuant to sec. 77.06(1), Stats., signed by Douglas Kincaid, identified as the woods manager for Sierra Development and Funding Company, Inc. Section 77.06(4), Stats., requires an owner to transmit to the Department a cutting report within thirty days after completion of cutting but no more than one year after filing notice of such cutting. Neither the Sierra Development and Funding, Inc., nor Dr. Saigh has ever filed a cutting report despite repeated requests by Department staff.

5. On November 13, 1996, Department Tax Law Specialist Mike Lietz, flew over the property and observed that timber had been harvested. Based on an analysis of aerial photographs, Mr. Lietz determined that the tree cutting on this parcel had been diameter limit cut (a harvest of all trees in excess of a certain size in diameter) with large areas essentially clear cut.

6. A diameter limit cut is the antithesis of sound forest management because instead of first removing diseased, low value trees first it removes only large healthy trees. This reduces the value of the wood lot and opens space for invading species such as raspberries, other species of herbaceous plants, and shrubs that thrive in open spaces. As these invading species thrive, the higher value hardwoods are unable to regenerate. Dr. Saigh has not practiced sound forest management on this property.

CONCLUSIONS OF LAW

1. Pursuant to sec. NR 46.02(17), Wis. Adm. Code, "Practice forestry", "sound forestry practices" and "sound forestry" mean sound and commonly accepted timber cutting, transporting and forest cultural methods recommended or approved by a qualified forester of the department for most effective propagation and improvement of the various timber types common to Wisconsin. Based on the evidence presented by the Department, Dr. Frederick Saigh, III, as owner of the subject property, has not practiced sound forest management with respect to this parcel.

2. Pursuant to sec. 77.10(1), Stats., failure to practice sound forest management is grounds for withdrawal of the land from the forest cropland program.

3. The Division of Hearings and Appeals has authority to hear contested cases and enter necessary orders relating to the withdrawal of forest croplands pursuant to secs. 227.43(1)(b) and 77.02, Stats.

ORDER

IT IS HEREBY ORDERED that pursuant to the foregoing Findings of Fact and Conclusions of Law, the land described above owned by Frederick Saigh, III is withdrawn from entry under the Forest Crop Law.

IT IS FURTHER ORDERED that the tax due by the owner (as determined by the Wisconsin Department of Revenue) and interest thereon shall be paid to the Department of Natural Resources pursuant to sec. 77.10(1)(a), Stats.

IT IS FURTHER ORDERED that a copy of this order be transmitted by the Department of Natural Resources to the Wisconsin Department of Revenue, to the Clerk of the Town of Alvira, to the Register of Deeds of Forest County and the Supervisor of Assessments of the property tax assessment district wherein the land is located.

Dated at Madison, Wisconsin on April 30, 1999.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705
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By Mark Kaiser
MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.